IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10762 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURABH C. CHOKSI - Petitioner(s)
Versus
VICE CHANCELLOR-GUJARAT UNIVERSITY & 1 - Respondent(s)

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Appearance :
MR RC JANI for Petitioner(s) : 1,
MRS VD NANAVATI for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/07/2006

ORAL JUDGMENT

The petitioner herein was a member of Executive Council of respondent No.1 Gujarat University. The

petitioner held this position by virtue of his election by the Academic Council in terms of provisions contained in Section 19(1)(viii) of the Gujarat University Act, 1949 (herein after referred to as the said Act).

The petitioner has produced letter dated 17th January, 2003 received by him from the Vice Chancellor of respondent No.1 University, which indicates that the petitioner was elected by the Academic Council on 17.01.2003 for the membership of the Executive Council of the University.

The case of the petitioner is that by virtue of his election as member of Executive Council on 17.01.2003, he is entitled to continue in the said position for a period of 3 years as provided under Section 19(2) of the said Act.

On the other hand, the case of the respondent No.1 university is that the petitioner was a co-opted member of the Academic Council in terms of the provisions contained in Section 21(2) of the said

Act. It is the case of the respondent No.1 that such co-option would be co-terminous with the term of the Academic Council. In this case the term of the Academic Council for which he was co-opted came to an end by 16th April, 2006. Petitioner was co-opted in the Academic Council on 17.04.2003. No co-opted member was continued as a member of the Academic Counsel beyond the term of the Council for which he was co-opted. It is the case of the respondent university that the end of term of the academic council with effect from 16.04.2006, the petitioner ceased to be a member of the Academic Council and since he was a member of the Executive Counsel was on the basis of being a member of the Academic Council automatically, he ceased to be a member of the Executive Council also.

In the rejoinder, it was submitted on behalf of the petitioner that even as per Sub-section 3 of Section 21 the term of office of the members of the Academic Council other than ex-officio members and members specified in clause (VI) shall be three years and that of the members specified in clause (vi) shall be one year. The petitioner is, therefore,

entitled to continue to enjoy the position of the member of the Academic Council for the period of 3 years from his co-option i.e. for 17.04.2003. It was further submitted that in any case where petitioner is elected as a member of the Executive Council, he must be permitted to complete his term of 3 years, as provided in Section 19(2) of the said Act.

It is not in dispute that the petitioner was co-opted member in the Academic Council. The co-option is made pursuant to the provisions contained in sub-section 2 of Section 21 of the Act, which provides inter-alia that as soon as the Academic Council is constituted under Sub-Section (1) it may co-opt as its additional members, two eminent persons who are experts in any of the subjects taught in the University. Such co-option of the academic council is made by council itself and once a term of council expires, obviously co-option also gets terminated. This question, however, need not be concluded in the present proceedings, since the petitioner who was co-opted on 17.04.2003 enjoyed his position as a member of the Academic Counsel for the full term of 3 years i.e. upto 16.04.2006. The real question is whether

after ceasing to be a member of the Academic Council, the petitioner can claim to continue as member of the Executive Council. He was co-opted as a member of the Academic Council and was elected as a member of the executive counsel unanimously by the Academic Council. This was done pursuant to provision contained in Clause (viii) of Section 19 of the said Act.

For the petitioner to be the elected member of the Executive Council, it was necessary that he be the member of the Academic Council. When his membership of the Academic Council came to an end at the end of the term, he must vacate his membership of the Executive Council also.

Thereafter, the petitioner cannot continue to enjoy the position of elected representative of the Academic Council. The new Academic Council would have right and opportunity to send its representative to Executive Council by election. Therefore, even if indirectly in this manner, term of the petitioner as a member of the Executive Counsel gets curtailed, I do not find anything illegal about the same, since

the very basic requirement that the petitioner should be member of the Academic Council no longer exists.

In the result, petition fails hereby rejected. Notice discharged.

(Akil Kureshi, J.)

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